

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LEROY HARRIS,

Plaintiff,

v.

CLARK COUNTY SCHOOL DISTRICT,

Defendant.

Case No. 2:23-cv-00259-MMD-MDC

ORDER

**I. SUMMARY**

*Pro se* Plaintiff Leroy Harris sued his former employer, Defendant Clark County School District, under the Americans With Disabilities Act of 1990, 42 U.S.C. § 12131, *et seq.* (“ADA”). (ECF No. 27.) This order resolves the currently pending motions (ECF Nos. 29, 33, 40, 43) and gives Plaintiff an opportunity to file a second amended complaint. However, the Court admonishes Plaintiff that it will dismiss this case with prejudice if he does not file a second amended complaint consistent with this order within 30 days. The Court further admonishes Plaintiff that he must attempt to familiarize himself with the Federal Rules of Civil Procedure, the Court’s Local Rules,<sup>1</sup> and all orders entered by the Court or United States Magistrate Judge Maximiliano D. Couvillier, III. Compliance with applicable procedural requirements going forward will make the Court better able to adjudicate the merits of Plaintiff’s claims.

**II. BACKGROUND**

Plaintiff filed an initial Complaint against Defendant. (ECF No. 2.) Defendant moved to dismiss it. (ECF No. 13.) In response, Plaintiff filed what appeared to be a proposed amended complaint. (ECF No. 15.) Because Plaintiff is proceeding *pro se*, the

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<sup>1</sup>United States District Court, District of Nevada, *Local Rules of Practice* (Last Amended Apr. 12, 2020), available at <https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Local-Rules-of-Practice-Amended-2020.pdf>.

1 Court construed his response as a motion for leave to amend, granted it, denied  
2 Defendant's initial motion to dismiss as moot, and deemed the proposed amended  
3 complaint the operative complaint. (ECF No. 25.) At the Court's direction, the Clerk of  
4 Court filed Plaintiff's proposed amended pleading as the first amended complaint. (ECF  
5 No. 27 ("FAC"); *see also* ECF No. 25.) The FAC remains the operative complaint in this  
6 case.

7 In the FAC, Plaintiff alleges four claims for violation of the ADA. (ECF No. 27.) The  
8 first claim focuses on alleged failure to accommodate his alleged disability because a  
9 ramp he used to transport sports equipment to a physical education area was removed.  
10 (*Id.* at 10.) His second claim focuses on allegations that the principal of the school where  
11 he worked declined to rehire him in retaliation for him complaining about the removal of  
12 the ramp. (*Id.* at 11.) Plaintiff's third claim also appears to allege the same retaliation  
13 theory, but is titled 'Unlawful Termination of Employment' under a Nevada statute. (*Id.* at  
14 12.) Plaintiff's fourth claim alleges he was not hired for several jobs he applied for with  
15 Defendant in the summer of 2020 because of his disability. (*Id.* at 12-13.)

16 Defendant moved to dismiss the FAC. (ECF No. 29.) In response to Defendant's  
17 motion, Plaintiff states that he stipulates to the dismissal of his first three claims alleged  
18 in the FAC. (ECF No. 31 at 2.) However, he opposes dismissal of his fourth claim alleging  
19 a failure to hire because of his disability. (*Id.*) That said, Plaintiff also discusses a 42  
20 U.S.C. § 1983 claim for violation of his Fourteenth Amendment rights (*id.*)—indeed, much  
21 of his responsive argument is devoted to arguing that his 'fourth claim' regarding violation  
22 of his constitutional rights under Section 1983 should not be dismissed (*id.* at 10-12). In  
23 reply, and among other arguments, Defendant points out in pertinent part that Plaintiff  
24 cannot assert a Section 1983 claim "for violation of Title VII or ADA." (ECF No. 32 at 7.)  
25 Defendant further explains that this argument is only even relevant if Plaintiff had asserted  
26 a Section 1983 claim in an operative pleading, and he has not. (*Id.* at 4 n.4.)

27 Next, Plaintiff filed a motion for summary judgment on his unasserted Section 1983  
28 claim. (ECF No. 33.) Defendant responds that Plaintiff's motion is premature for several

1 reasons, appears to be based on a misreading of a minute order the Court issued,  
2 alternatively should be denied on its merits, and denied because it is based on a Section  
3 1983 claim not asserted in the operative FAC. (ECF No. 36.)<sup>2</sup>

4 Defendant then filed a motion to stay the dispositive motion deadline, requesting  
5 the Court stay all deadlines in the case until the Court adjudicates the motion to dismiss  
6 it had previously filed. (ECF No. 40.) Plaintiff opposed this motion, and Defendant filed a  
7 reply. (ECF Nos. 42, 45.) But apparently in part because the Court did not rule on that  
8 motion before the dispositive motion deadline arrived, Defendant filed a precautionary<sup>3</sup>  
9 motion for summary judgment on all Plaintiffs' claims asserted in the FAC along with  
10 Plaintiff's unasserted Section 1983 claim. (ECF No. 43.) Plaintiff opposed that motion as  
11 well. (ECF No. 48.) As of the date of entry of this order, the deadline for Defendant to file  
12 its reply in support of its motion for summary judgment has not yet elapsed. (*See id.*)

### 13 **III. DISCUSSION**

14 The FAC is currently the operative complaint. (ECF No. 27.) Plaintiff consents to  
15 the dismissal of the first three claims in it. (ECF No. 31 at 2.) Defendant's motion to  
16 dismiss (ECF No. 29) is accordingly granted as to those three claims regarding an alleged  
17 denial of reasonable accommodations, and alleged failure to rehire Plaintiff in retaliation  
18 for his requests for accommodation (ECF No. 27 at 10-12).

19 That leaves Plaintiff's fourth claim for an alleged ADA violation regarding  
20 Defendant's decision not to hire him for eight jobs he applied for in the summer of 2020  
21 because of his disability. (*Id.* at 12-13.) Defendant argues in pertinent part that the Court  
22 must dismiss this claim because Plaintiff failed to sufficiently allege discrimination, instead  
23 simply concluding in the pertinent section of the FAC that Defendant failed to rehire him  
24 because of his disability. (ECF No. 29 at 13.) The Court agrees with Defendant.

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26 <sup>2</sup>Plaintiff filed a reply. (ECF No. 39.)

27 <sup>3</sup>Defendant repeatedly mentions how the outcome of the motion could depend on  
28 whether and how the Court rules on its previously filed motions to dismiss and to stay the  
dispositive motion deadline. (*See, e.g.*, ECF No. 43 at 11.)

1            “[U]nder the ADA, an employee bears the ultimate burden of proving that he is (1)  
2        disabled under the Act, (2) a ‘qualified individual with a disability,’ and (3) discriminated  
3        against ‘because of’ the disability.” *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 988  
4        (9th Cir. 2007). Here, Plaintiff merely alleges in a conclusory fashion that he was not hired  
5        because of his disability. (ECF No. 27 at 12-13.) But mere recitation of the elements does  
6        not suffice without the accompanying, sufficient factual allegations that could state a  
7        plausible claim. See, e.g., *Franklin v. Adams & Assocs., Inc.*, 817 F. App’x 505, 506 (9th  
8        Cir. 2020) (making similar findings). Indeed, the same pleading standards apply to ADA  
9        claims as every other case in federal court. To survive a motion to dismiss, a complaint  
10       must contain sufficient factual matter to “state a claim to relief that is plausible on its face.”  
11       *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.  
12       544, 570 (2007)). Plaintiff has not done that in his FAC with respect to his fourth claim.  
13       The Court thus also grants Defendant’s motion to dismiss (ECF No. 29) as to Plaintiff’s  
14       fourth claim regarding Defendant’s decision not to hire him for the various jobs he applied  
15       for in the summer of 2020 (ECF No. 27 at 12-13).

16            In sum, the Court dismisses Plaintiff’s FAC (*id.*) in its entirety.

17            Turning to Plaintiff’s purported Section 1983 claim, it is not before the Court  
18        because the operative FAC does not contain a Section 1983 claim, or even mention  
19        Section 1983. (ECF No. 27.) See also *Trishan Air, Inc. v. Fed. Ins. Co.*, 635 F.3d 422,  
20        435 (9th Cir. 2011) (finding that because the plaintiff’s “complaint did not raise this claim,  
21        it was not properly before the district court.”). Plaintiff’s motion for summary judgment on  
22        this unasserted claim (ECF No. 33) is accordingly denied. See *id.* n.19 (noting that the  
23        plaintiff had raised the claim for the first time in opposition to a motion for summary  
24        judgment).

25            But that said, it certainly appears that Plaintiff is attempting to assert a disability  
26        discrimination claim based on Defendant’s failure to hire him for the jobs he applied for in  
27        the summer of 2020, and/or a Section 1983 claim based on the same failure to hire him.  
28        (ECF No. 31 at 10-11.) See *Orion Tire Corp. v. Goodyear Tire & Rubber Co.*, 268 F.3d

1 1133, 1137-38 (9th Cir. 2001) (specifying that facts raised for the first time in a plaintiff's  
2 opposition papers should be considered by the Court in determining whether to grant  
3 leave to amend or to dismiss the complaint with or without prejudice). The Court has  
4 discretion to grant leave to amend and should freely do so "when justice so requires."  
5 Fed. R. Civ. P. 15(a); *see also Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir.  
6 1990). The Court is also mindful—as it was when it issued a prior order construing  
7 Plaintiff's response to Defendant's initial motion to dismiss as a motion for leave to  
8 amend—of the fact that Plaintiff is proceeding *pro se*. (ECF No. 25 (citing cases).)

9 For all of these reasons, the Court grants Plaintiff leave to file a second amended  
10 complaint within 30 days of the date of entry of this order. However, Plaintiff may only  
11 attempt to assert claims based on Defendant's failure to hire him for the jobs he applied  
12 for in the summer of 2020, as he consented to the dismissal of his first three claims based  
13 on different factual allegations. To the extent Plaintiff wishes to challenge Defendant's  
14 failure to hire him for the jobs he applied for in the summer of 2020 under the ADA, the  
15 Court refers him to the elements of that claim *supra*. To the extent Plaintiff wishes to bring  
16 a claim under Section 1983 based on the same factual allegations, he should be aware  
17 of the law provided below.

18 42 U.S.C. § 1983 provides a mechanism for the private enforcement of substantive  
19 rights conferred by the Constitution and federal statutes. *See Graham v. Connor*, 490  
20 U.S. 386, 393-94 (1989). Section 1983 "is not itself a source of substantive rights,' but  
21 merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v.*  
22 *Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3  
23 (1979)). To state a claim under § 1983, a plaintiff "must allege the violation of a right  
24 secured by the Constitution and the laws of the United States, and must show that the  
25 alleged deprivation was committed by a person acting under color of law." *West v. Atkins*,  
26 487 U.S. 42, 48-49 (1988). Moreover, because Plaintiff has only named the Clark County  
27 School District as a defendant, Plaintiff should also be aware of the following law.

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1           “A government entity may not be held liable under 42 U.S.C. § 1983, unless a  
2 policy, practice, or custom of the entity can be shown to be a moving force behind a  
3 violation of constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir.  
4 2011) (citing *Monell v. Dept. of Soc. Servs. of the City of New York*, 436 U.S. 658, 694  
5 (1978)). “In order to establish liability for governmental entities under *Monell*, a plaintiff  
6 must prove ‘(1) that [the plaintiff] possessed a constitutional right of which he was  
7 deprived; (2) that the [governmental entity] had a policy; (3) that this policy amounts to  
8 deliberate indifference to the plaintiff’s constitutional right; and, (4) that the policy is the  
9 moving force behind the constitutional violation.’” *Dougherty*, 654 F.3d at 900 (quoting  
10 *Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill*, 130 F.3d 432, 438 (9th Cir.1997)).

11           Because the Court is granting Plaintiff leave to file a second amended complaint  
12 based on Defendant’s decision not to hire him for the various jobs he applied to in the  
13 Summer of 2020, the Court denies Defendant’s motion for summary judgment (ECF No.  
14 43) as premature. The Court also denies Defendant’s motion to stay the dispositive  
15 motion deadline (ECF No. 40) as moot.

16           The Court gives Plaintiff 30 days to file his second amended complaint in line with  
17 this order. If Plaintiff does not timely comply, the Court will dismiss this case with  
18 prejudice. If Plaintiff does timely comply, the Court will refer this case to Magistrate Judge  
19 Couvillier to set a new case schedule, under which Defendant will have the opportunity  
20 to file additional dispositive motions targeting the contemplated second amended  
21 complaint. But to start, Defendant will have 20 days from the date Plaintiff files his second  
22 amended complaint to answer or otherwise respond.

#### 23   **IV. CONCLUSION**

24           The Court notes that the parties made several arguments and cited to several  
25 cases not discussed above. The Court has reviewed these arguments and cases and  
26 determines that they do not warrant discussion as they do not affect the outcome of the  
27 motions before the Court.

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1 It is therefore ordered that Defendant Clark County School District's motion to  
2 dismiss (ECF No. 29) is granted as specified herein.

3 It is further ordered that Plaintiff's operative first amended complaint (ECF No. 27)  
4 is dismissed, in its entirety, without prejudice, and with leave to amend.

5 It is further ordered that Plaintiff's motion for summary judgment (ECF No. 33) is  
6 denied as specified herein.

7 It is further ordered that Defendant's motion to stay the dispositive motion deadline  
8 (ECF No. 40) is denied as moot, as specified herein.

9 It is further ordered that Defendant's motion for summary judgment (ECF No. 43)  
10 is denied as specified herein.

11 It is further ordered that Plaintiff may file a second amended complaint consistent  
12 with this order within 30 days.

13 It is further ordered that if Plaintiff does not timely file a second amended complaint  
14 consistent with this order, the Court will dismiss this case with prejudice.

15 It is further ordered that, if Plaintiff timely files a second amended complaint  
16 consistent with this order, Defendant will have 20 days to file a responsive pleading or  
17 motion.

18 It is further ordered that, if Plaintiff timely files a second amended complaint  
19 consistent with this order, the Court will refer the process of adopting a revised scheduling  
20 order to United States Magistrate Judge Maximiliano D. Couvillier, III.

21 DATED THIS 1<sup>st</sup> Day of March 2024.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

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23  
24 MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE